

Pacific Coatings Company and Robert Tackett and International Brotherhood of Painters & Allied Trades, Local 1595, AFL-CIO. Cases 31-CA-20031 and 31-CA-20394

August 8, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge filed by the Union in Case 31-CA-20394 on February 2, 1994 (amended on March 22, 1994) and a charge filed by Robert Tackett (Tackett) in Case 31-CA-20031 on July 16, 1993, the General Counsel of the National Labor Relations Board issued a consolidated amended complaint on March 31, 1994, against Pacific Coatings Company, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On July 5, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On July 7, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 28, 1994, notified the Respondent that unless an answer was received by May 6, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a sole proprietorship owned by Richard DeLong Jr., at its facility in Mission Hills,

314 NLRB No. 114

California, is engaged in business as a painting contractor. The Respondent, in the course and conduct of its business, annually derives gross revenues in excess of \$250,000 and annually sells goods or services in excess of \$50,000 to customers or business enterprises including but not limited to work for the City of Long Beach, Los Angeles Unified School District, and the University of Southern California, located within the State of California, which customers or business enterprises themselves meet one of the Board's jurisdictional standards other than the indirect inflow or indirect outflow standard. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Brotherhood of Painters & Allied Trades, Local 1595, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On about March 15, 1993, Respondent told Tackett, an employee within the meaning of the Act, that Respondent would not hire him or consider him for hire because of his union activities or the union activities of his brother, Rollie Tackett.

Since about late January 1993, Respondent refused to consider for hire and/or refused to hire Tackett and since that time has failed and refused, and continues to fail and refuse, to consider for hire or hire Tackett because of the activities for the purposes of collective bargaining or other mutual aid or protection of his brother or because Tackett engaged in other activities for the purposes of collective bargaining or other mutual aid or protection.

On about January 10, 1994, Respondent refused to hire or consider for hire job applicant Kent D. L. Gates (Gates), and since that date has failed and refused, and continues to fail and refuse, to consider for hire or to hire Gates for a position of employment because of his support for, or membership in a union and/or because Gates engaged in other activities for the purposes of collective bargaining or other mutual aid or protection.

On or about January 10, 1994, Respondent interrogated employees regarding support for, or membership in, a union and informed an employee that he would not be hired because of his support for, or membership in, a union.

On about January 12, 1994, Respondent interrogated an employee regarding his support for, or membership in, a union.

We find that by these acts and conduct Respondent has violated Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

By interrogating employees concerning their support for, or membership in, a union, and by telling employ-

ees that they would not be hired by the Respondent because of the employees' or the employees' relatives' union activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By refusing to hire or consider for hire Robert Tackett and Kent D. L. Gates, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has refused to hire or consider Robert Tackett and Kent D. L. Gates for an employment position because of their activities and membership in a union, we shall order the Respondent to offer immediate employment to Tackett and Gates. We shall also order the Respondent to make whole Tackett and Gates for any lost earnings and other benefits suffered as a result of the discrimination against them, to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Pacific Coatings Company, Mission Hills, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees regarding their support for, or membership in, a labor organization.

(b) Telling employees that they will not be hired because of the employees' or the employees' relatives' union activities.

(c) Refusing to hire employees, or consider them for hire, because of their support for, or membership in a labor organization, or because of the union activities of their relatives.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Robert Tackett and Kent D. L. Gates immediate employment in the same position in which they would have been hired in the absence of discrimination against them or, if that position no longer exists, in a substantially equivalent position, and make them whole for any loss of earnings and other benefits suf-

fered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful refusals to hire and notify the employees in writing that this has been done and that the refusals to hire will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Mission Hills, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 8, 1994

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees regarding their support for, or membership in, a labor organization.

WE WILL NOT tell employees that we will not hire them because of their union activities or their relatives' union activity.

WE WILL NOT refuse to hire employees because of their membership in or activities on behalf of, a labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Robert Tackett and Kent D. L. Gates immediate employment in the same position in which

they would have been hired in the absence of the discrimination against them or, if that position no longer exists, in a substantially equivalent position, and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, including interest.

WE WILL notify them that we have removed from our files any reference to our unlawful refusals to hire and that the refusals to hire will not be used against them in any way.

PACIFIC COATINGS COMPANY